

Anchorage, Alaska

DART Site Visit: September 4, 2009*

Report by Judge Charles L. Smith

[*NOTE: Judge Smith travelled to Anchorage at his own expense to attend the wedding of his niece. Knowing that the Alaska courts have been using electronic recording technology for capturing the verbatim record of court proceedings for many years, he arranged (prior to his trip) to visit the court in Anchorage the day before the wedding -- without cost to the state of Iowa or the judicial branch.]

On September 4, 2009, I spent the day in Anchorage, Alaska with the following people: Joe Manion, Alaska Judicial Branch I.T. Director; Alyce Roberts, Special Projects Administrator for the Alaska State Court Administrator; Superior Court Judges Mark Rindner and Phillip Pallenberg; Kathleen Amand, State Transcript Coordinator; and Judges Joel Bolger and David Mannheimer, who are two of the three members of the Alaska Court of Appeals.

JUDICIAL BRANCH STRUCTURE:

The state of Alaska's judicial branch is established on a district basis with no county courts. They have a unified system much like Iowa's.

There is a five-person Supreme Court and a three-person Court of Appeals. They have sixty-six (66) judges serving in forty-one (41) courthouses. There are approximately one hundred forty (140) courtrooms. Of the sixty-six judges, forty-five are Superior Court and 21 are District Court. The Superior Court has general jurisdiction like our District Court. There are also a number of magistrates serving in places where no other judicial officer is available. All of the judicial proceedings are recorded digitally including those matters that are heard by a magistrate.

REPORTING/RECORDING HISTORY AND CURRENT STATUS:

In its fifty year history, Alaska has never had court reporters; they have always used some sort of recording device. In 1999, the state first adopted digital audio recording and used F.T.R. on a uniform state wide basis. All of the F.T.R. units were free standing with no server-based recordings. All records were stored on discs on a daily basis but were not backed up. There was no redundancy of any type. This caused some problems, including the loss of the record in some cases. Recently, the state signed a new contract with CourtSmart after an extensive study and RFP. At the present time, they have installed CourtSmart with servers in approximately 60% of the courtrooms statewide and expect full implementation by the end of this year. Even

though they are using CourtSmart, they saw no benefit to and are not utilizing the central monitoring facility offered by the company.

COURTROOM STAFFING AND EQUIPMENT:

The courtrooms each have six microphones. There is a courtroom clerk in the courtroom at all times in cases in which a Superior or District Court Judge is presiding. The courtroom clerk makes log notes or annotates the record for the judge. At a minimum, the clerks make a notation of the case name and number being recorded, the name and time of recording for each witness, and description and time offered for exhibits. Some courtroom clerks make more extensive annotations or log notes if they are comfortable doing so and the judge wants that done. In most cases, the courtroom clerk is not monitoring the courtroom 100% of the time and continues to carry out other duties while monitoring the courtrooms from time to time. In a courtroom with many cases such as arraignments, pleas and bond reviews, the case number and title is all that is noted or annotated.

At the present time, most judges do not annotate. Most have “read only” software available on their computers in their chambers and on the bench. All of them have the ability to make the record via microphone in their chambers as well as in the courtroom; however, this is not done a great deal and more often the record is made in the courtroom. Nevertheless, the judges believe the microphone in chambers is necessary and useful. During jury selection, the jurors are questioned while passing around either a wired or wireless microphone.

Each courtroom has the ability to put “white noise” on the courtroom speakers during side bars which prevents the jury from hearing the discussion but allows the system to continue to record without picking up the “white noise.” All found this to be an outstanding feature.

I spoke with Judge Phillip Pallenberg using a teleconference hook-up that was integrated into the CourtSmart facility in Anchorage. He likes the annotation feature that CourtSmart has on its system and has the ability to use it in his chambers as well as on the bench; he prefers CourtSmart and demonstrates the system to other judges and lawyers. Because of the cost, most Alaska judges have a “read only” version of the CourtSmart software. In other words, the only person who is able to do annotations and log notes is the courtroom clerk. CourtSmart charges a separate license fee for each software unit on which one can annotate. Judge Pallenberg is an exception and he believes the ability of the judge to annotate is very helpful.

One negative aspect of digital audio reporting with centralized servers, like the CourtSmart system, is that a single power outage (apparently a fairly regular occurrence in some parts of Alaska) shuts down all courtrooms. They have an emergency backup power supply, but that lasts only 20 minutes before they’re finished. The Judges report very few technical problems, other than the power outages, which cannot be fixed in just a few minutes.

Attached to my email is a breakdown of the cost per courtroom. The only portion of that from CourtSmart is the \$8,800 per courtroom license fee. The Alaska I.T. department purchased, wired and installed everything else.

They saw no need for cameras.

The service agreement is approximately 10% of the cost per year.

Play back is seldom used, but can be accomplished easily.

All recordings are stored on the server for two years and then reproduced on disc for storage off-site.

STAFFING:

Each Superior Court Judge has a secretary, a courtroom clerk and a law clerk.

EXPERIENCE:

In general, there were no complaints by judges or lawyers about the system. Of course, most of the judges and lawyers had little or no experience with court reporters. The system is used in all cases and, when needed, can accommodate a daily record.

There are occasions when an attorney will bring a court reporter to a trial, most often to assist them in a daily record, and the judges have no objections. This occurs most often in a very complex civil case. One was under way while I visited, involving multiple oil exploration companies with competing claims for oil and gas. Such situations are seen as rare occurrences.

TRANSCRIPTS:

My discussion with Kathleen Amand, the State Wide Transcript Coordinator, was very interesting. She and one assistant administer the production of transcripts for the Judicial Branch. They have transcriptionists and court reporters producing transcripts. They refer to these people as vendors and have an open solicitation of vendors that can be accessed on their court system's web site. The following information was supplied by her and is most interesting:

Number of transcriptionists/vendors:	11 plus 2 more pending approval
Number of vendors in Alaska:	3
Number of vendors in lower 48 states:	8
Total expenditure for transcripts in 2008:	\$420,000

To be approved:

Kathleen tests the applicants. They are asked to prepare a transcript within a certain time period using a known recording and the resulting transcript is then compared to known and correct transcript.

Kathleen Amand applies and checks other standards such as criminal history and then approves the person. They can be removed if their work is judged to be inferior.

Controls:

I asked Kathleen some questions concerning quality control and procedures to deal with inaudible (which they refer to as "indiscernible." Here are her responses and a copy of their policy in that regard.

Question by CLS: Do you have any thought on the % of transcripts that require you to go back to the transcriptionist because of their notation that a part of the recording was inaudible? I got the impression that most of the transcripts are completed without any problem, but would like to know approximately how many may have problems with the quality of the recording.

Answer by Kathleen Amand: *When there's a verifiable problem with the quality of the recording, that doesn't get counted as an unacceptable transcript that would cause it to get returned to the transcriber for corrections unless I or my assistant can clearly hear what was indicated as indiscernible. By contract our transcribers have to fill out a transcriber audio evaluation for each transcript (form attached, along with others that might be of interest) and on that they would specify any problems with the audio. If there are significant indiscernible portions, I would review the audio and if verified make sure the problem is shared with our IS department and the area court administrator through distribution of the transcriber evaluation. Here's what our manual says regarding indiscernible portions:*

E. INDISCERNIBLE

The Alaska Court System expects transcribers to tune in to individual channels on transcribing equipment to assist in clarifying INDISCERNIBLES. In determining the accuracy rate of a transcript, the court system counts as a major error an indiscernible that is discernible to the transcript coordinator (or another ACS employee) when listening to the same cassettes used by the transcriber, except in the circumstances listed below:

1. **Bench Conferences.** Until the recording quality of bench conferences improves, transcribers are only required to transcribe what is discernible to them after listening a minimum of one minute. Transcripts will not be rejected because of INDISCERNIBLE in a bench conference unless the transcriber failed to transcribe speech that was discernible to the transcript coordinator (or another ACS employee) after listening to the conference no less than one minute.
2. **Speech Away from a Microphone and Telephonic Speech.** Transcribers must attempt to transcribe what is said by speakers who have stepped away from a microphone and by speakers who are participating telephonically. However, if after a reasonable time, one minute minimum, the transcriber cannot discern what was said, the transcriber must type a summary phrase in parentheses (*Indiscernible - away from microphone* or *Indiscernible - telephonic speech*.) Transcripts will not be rejected because of INDISCERNIBLES that are marked in this manner unless the transcriber failed to transcribe speech that was discernible to the transcript coordinator (or another ACS employee) after listening to that portion of the audio no less than one minute.

We have returned 32 transcripts for correction since the beginning of our current contract year which began 10/1/08. That's out of a total so far of 1193 transcripts that were produced. They were predominately format errors, with a few exceptions. Most of these came from newer transcribers and their error rate is minimal now. No one likes getting a notice of unacceptable transcript.

At least 5% of each transcript is proofed for quality by Kathleen or her assistant. There are very detailed forms used by her and the transcriptionists to assist them in locating problems with the audio or to send back a transcript where the "indiscernible" part was in fact able to be heard by Kathleen or her assistant.

I got the impression that indiscernible audio was rare and had not caused any problems for the appellate courts.

Kathleen indicated that the transcriptionists/vendors had reported that they preferred the old F.T.R. recordings to CourtSmart. They felt that it was easier to isolate the sounds by track on F.T.R.'s system. Kathleen felt that this might just be due to adjustment to a new system as Alaska has only used CourtSmart for the last few months.

Kathleen also indicated that during the RFP she preferred JAVS's system because she felt their sound quality was the best.

Alaska pays transcriptionists:

\$3.05 per page for transcripts that are to be completed in seven days, and

\$2.80 per page for transcripts that are to be completed in thirty days.

The transcriptionists have the least trouble producing a transcript from a record produced in court rooms with judges who are proactive in managing the record in their courtroom and with court clerks who do the most annotating.

Attached to my e-mail are some of the forms used by the State Wide Transcript Coordinator and the Alaska Court Rules in regard to the record.

Also attached to the e-mail is a cost breakdown of equipment used in the courtrooms.

END USERS – COURT OF APPEALS

I had the pleasure of spending some time with Judges Joel Bolger and David Mannheimer, two of the three members of the Court of Appeals in Alaska. Both happen to be natives of Iowa. Judge Mannheimer is a graduate of the University of Iowa College of Law. My discussion with them was limited to their assessment of the accuracy of the transcripts. Both of these appellate judges have spent most of their careers in Alaska. They have experience with court reporters or transcripts prepared by court reporters, but they have more experience with transcripts prepared from a digital audio recording. Sometimes a transcript is prepared from a court reporter's notes because an attorney or attorneys chose to independently hire a court reporter to make the record of a trial or deposition. This rarely happens but gives them some experience with a traditional record and transcript. One of these judges practiced in California before coming to Alaska and had experience with traditional court reporting there.

They could point out no discernable difference in the quality of the transcripts prepared either by court reporters from a trial or the digital audio record of a trial. In fact, both of them actually preferred the record from a digital audio source since a dispute by attorneys as to the accuracy of a record made by a court reporter often can only be resolved by trusting that the reporter accurately took down the testimony, even though one or even both attorneys disagreed with that record. They both noted that the audio record is always available to resolve the dispute by having the Court listen to the actual recording.